

**EMPLOYMENT ADVISORY COUNCIL MEETING
MINUTES AUGUST 24, 2006**

DATE AND TIME: Thursday, August 24, 2006

PLACE: Department of Workforce Services
140 E 300 S
Room 303
Salt Lake City, UT

MEMBERS

PRESENT: Tani Pack Downing, Chair
Thomas Bingham
Steve Booth, by phone
John S. Chindlund
Eddie P. Mayne
Tony Montano
James V. Olsen
Reta Oram
Mary Catherine Perry
John Williams

OTHERS: Rep. Merlynn Newbold
Brian Cowley, DWS
Jerry Fruin, DWS
Art Hunsaker, Legislative Research/General Counsel
Chris Love, DWS
Kathy Prettyman, DWS
John Smith, DWS
Bill Starks, DWS
Jim Wilson, Legislative Research/General Counsel

WELCOME

Tani Downing welcomed the members.

APPROVAL OF JUNE 28, 2006 MINUTES

On page 6, the minutes were corrected to add the word "credit" to read, "If a state exempts...each employee's wages to the IRS with no credit." On motion by Mary Catherine Perry, second by Jim Olsen, the June 28, 2006 minutes were approved as amended.

COUNCIL MEMBERSHIP VACANCY

Tani Downing announced that Lynn Ward resigned from the Council due to other commitments. If members have suggestions for a Public Representative, please contact her.

FOLLOW-UP ON ACTION ITEMS

Social Security Offset: Bill Starks referenced a July 12th email sent to the Council regarding the Social Security offset and alternative funding of the benefit. Gerald Hildebrand, USDOL Chief of Division of Legislation indicated that other states are charging employers and he is not aware of any other option to preserve this benefit without charging the employer. Information on the total number of employers and the relative size of the employers who would have been charged the benefit costs is included in the memo. This will be discussed later in the meeting.

INTERIM STUDY #179 LIMITING UNEMPLOYMENT INSURANCE TAX RATE INCREASES

At the previous Council meeting, alternative UI contributory methods were discussed at the request of Rep. Merlynn Newbold. The issue is whether state statute can be amended to provide tax relief to employers that experience a significant increase in their contribution rate. Bill Starks referenced the August 24, 2006, memo. The most viable alternative is a voluntary contribution that gives employers the option to buy back benefit costs for the current year or all four years that have been charged against their UI accounts, thereby reducing their benefit ratio, which reduces their overall tax rate. He has met with Rep. Newbold to discuss options and reviewed implementation costs estimated to be \$350,000; the ongoing costs are less significant. A 10% surcharge would help alleviate on-going administrative costs. The impact to the Trust Fund depends on how the program is structured. If all employers with benefit charges are allowed to participate, the potential negative impact is greater. His recommendation is to limit participation to employers with a 1-2% tax increase, thus limiting the potential negative impact on the Trust Fund.

Bill Starks reviewed data on employers with a 1% or 2% increase in their tax rate that would benefit. There are approximately 65,000 active employers, approximately 3,009 had a 1% or greater increase and 1,222 had a 2% or greater increase in 2003. The voluntary contribution would generally benefit an employer with an increase in tax rate and who subsequently increased payroll in succeeding years. A voluntary contribution limited to employers with a 1% increase would potentially benefit approximately 600-1,000 employers; a 2% increase would potentially benefit 203-360 employers.

Bill Starks discussed the voluntary contributions systems in Washington and Texas. Washington State's system is attractive because it is more restrictive, which results in less on-going administrative expenses and it limits the potential negative impact to the Trust Fund. Washington has 200,000 employers and of the 15,000 eligible to participate, about 9-13 employers buy back approximately \$1 million in benefit costs annually. Texas has over 400,000 employers and of the 200,000 eligible to participate, about 2,000 employers buy back approximately \$8 million in benefit costs annually. Neither state has calculated the impact voluntary contributions have to their Trust Funds.

Rep. Newbold said the initial discussion was brought to her by a constituent who is a small employer and in 2002 laid off employees. Consequently, his tax rate increased and

his total tax liability will rise significantly higher if he increases hiring than the benefit costs attributable to his laid off workers. He was aware that other states had a different option and thought it was a viable alternative. Rep. Newbold agreed to approach the idea with the intent it would be simple, easy to understand and cost effective. She would appreciate the Council's input as to the parameters and the opinions of the groups they represent. Ed Mayne said the Council is interested in the integrity of the Trust Fund and in fairness to employers and employees. If there is a proposal that won't hurt the Trust Fund, he doesn't have a problem with it, but we need to be true to the overall picture of the system. We all have interests around the table and his is to make sure the Fund is healthy to pay benefits during economic downturns. Jim Olsen said he understands Rep. Newbold and her constituent's concern, as employers are charged higher rates during economic downturns and layoffs. His concerns with this proposal are the start-up costs and the potential of opening a loophole in the system. It seems like a high cost for limited potential. Bill Starks said that using Reed Act Funds is an option for paying the one-time implementation costs; Reed Act distribution are not restricted to the payment of benefits or reducing employer taxes. The \$350,000 start-up costs would have a negligible effect on the Fund and would not create any tax rate increases.

John Chindlund asked if there was a way to bracket rates to remove the rate fluctuations associated with layoffs. Bill Starks said there are essentially three possible experience rating systems used nationally and that is not one of them. There are 17 states, including Utah, using a "benefit ratio" system; 33 states use a "reserve ratio" system. Most "benefit ratio" states use a three-year experience formula; Utah uses four years, the federal minimum is three years. Rep. Newbold felt that if an employer was restricted to buy back only their current year benefit costs it might prevent gaming the system. It would be a win-win situation to pay up front rather than over a period of four years. Jim Olsen agreed it would lessen the effect. Bill Starks said the impact to the fund can be tracked over time but would not be known for four years. He added that Utah's rates are competitive and 20% below the national average. Rep Newbold asked if the Council's membership had any interest in this. Jim Olsen said his group had zero interest. He is not ready to say no, but has reservations. Mary Catherine Perry said this type of program sounds fair, but wished there was more interest by employers and doesn't feel there is a need. Ed Mayne agreed the employer should pay for the program with a surcharge. He added that the Council would resist start-up costs coming out of Trust Fund. He asked if we are going to start offering different programs by going into these areas. Tom Bingham said it's a good question as to whether we are moving to self funding rather than paying into the Fund. Chris Love said that type of program would probably need federal intervention.

Bill Starks explained that the employer could purchase only the benefits paid through June 30th and the rate would be calculated in November based on activity through June 30th. Rep. Newbold said it seemed the system would benefit if the employer paid the entire benefit cost up front whether the employee used the maximum or not. Bill Starks said the Fund would initially see a positive impact because employers would buy benefit costs and would not realize the lower tax liabilities for one to four years. Jim Olsen said the employers that would use it would be ones who grow after a layoff.

Rep. Newbold felt conceptually the Council is ok with the proposal. Ed Mayne said the question is the \$350,000 start up costs. Jim Olsen said if it is appropriated with a fiscal note he is ok, but he doesn't want to take it out of the Trust Fund. Rep. Newbold thanked the Council for its input.

The Council indicated that it would wait to vote until Rep. Newbold decides whether or not to proceed with the legislation and, if legislation is proposed, review it at that time.

SOCIAL SECURITY OFFSET

The draft bill amends 35A-4-401 to align the Social Security Offset with federal law. It deletes:

~~“(B) An employer is not liable for additional benefits paid as a result of this Subsection (2)(c)(ii).”~~ and

~~“(C) The department shall fund those costs from Reed Act moneys.”~~

Bill Starks said USDOL says the offset is not in conformity with the Federal Unemployment Tax Act (FUTA) as it violates the experience rating provision. It cannot be funded with Reed Act funds. Initially DOL approved the bill and, if not for extending the sunset provision last year, this would likely not have been reviewed. In the last meeting the Council reviewed the choices for a bill file: revert to the 100% offset, charge employers for the associated benefit costs of a 50% offset, or go to a 0% offset. Tani Downing asked if the Council supports a 100%, 50% or 0% Social Security offset. As noted in the last meeting, only Ohio, the Virgin Islands and Puerto Rico have a 100% offset. Ohio has a 50% offset bill proposed for this year. Forty-one states have 0% offset, nine have 50% and one state has 100%. She said Jim Wilson would draft the legislation as the Council determines, but the Council's feeling was to look at the 50% provision rather than 100%. In that scenario, the employer would assume the cost.

Bill Starks explained that a claimant with social security retirement benefits has 50% of the social security benefit counted as retirement income and it offsets against UI Benefits dollar for dollar. A 100% offset typically offsets the entire unemployment benefit. Currently, the offset cost is charged to Reed Act, which was part of the Council's negotiation in 1999 to divide the distribution between claimants and employer interests. Ed Mayne said it was divided with employer representatives wanting it to go to the Trust Fund to reduce cost and taxes, and the labor side supporting additional benefits, of which the 50% offset was one. The cost of the offset was originally estimated to be \$4.3 million annually, and the actual costs have been approximately \$1 million total for the first two years. He didn't think we're looking to go to 0% offset, but it would be embarrassing not to keep the 50% offset.

Motion: The motion was made by Jim Olsen, seconded by Tom Bingham that the Council endorse the draft Social Security Offset legislation, with the exception to restore Subsection 2B so costs would be charged to social costs and not be directly charged to specific employers.

Bill Starks said that would be problematic, as USDOL and federal law says the charge has to be tied to the experience rating provision, which essentially charges employers based on their unemployment risk. Ed Mayne said he would like the Department to research what other states are doing. He suggested retaining (B), removing (C) and see where (B) would have to go so as not to conflict with USDOL. Bill Starks reiterated that the offset couldn't be charged to all employers as a social cost. Jim Wilson recommended that we draft the bill as the amendment states and see if it gets approval. He has not yet put in an effective date. Bill Starks said USDOL says it is a conformity issue that it will not hold the Department responsible retroactively if the law is corrected in the upcoming session. Tom Bingham asked if we remove (B) and (C), is there some room to make adjustments in Reed Act to cover that. Bill Starks said if we're relieving employers of charges or if it defaults to social cost, it's a violation of the experience rating. Tani Downing said USDOL says the charges have to be reflected in the employer's rating and she has to comply.

Jim Olsen withdrew his motion. Tom Bingham said his initial concern when this was presented was that it would impact employers.

Motion: Ed Mayne made the motion to go forward in the spirit of what DOL said and remove (B) and (C), and keep the bill the way Jim Wilson has drafted it. Reta Oram seconded the motion. The motion passed, with Tom Bingham voting nay.

Action: Bill Starks will email the Council information on how other states charge for the social security offset.

EMPLOYMENT SECURITY ACT AMENDMENTS

35A-4-305. Collection of Contributions – Unpaid contributions to bear interest. Bill Starks said Section 4(b) is a non-substantive change.

Page 3 Section 4(b) amends the section to align with changes to the new Federal Bankruptcy Act.

Page 4 Section 8(d)(i): This is an effort to address payroll advisors who won't file electronically unless it is required by law. The ability to comply at a reasonable cost is taken into account. The Department will be reasonable and is willing to work with employers without penalizing them if they show a willingness to work towards compliance. There will be an effective date of January 1, 2008 to offer sufficient notice.

Motion: Tom Bingham, made the motion, seconded by Ed Mayne, to approve the amendments. Motion passed unanimously.

MISCELLANEOUS

- Tani Downing said there is a 'clean up' bill that removes references to divisions consolidated in the transition to DWS that no longer exist. That bill will be emailed to the Council and if it wishes to discuss it, a meeting will be called. Jim Olsen said he would like a meeting in November to discuss the tax rates when they are known.

- Tani Downing said guidance is being sought from the Legislature on the misuse of social security numbers. The Department has discovered that SSNs of young children are showing wages, which is an issue when people apply for benefits and their children's SSNs show wages. The Department cannot tell the customer who is using their number or their child's number. There are also cases where SSNs are invalid or do not match SSA records and employers are sent letters asking them to fix it. Since there is no penalty for not complying with a request, the situation may or may not be corrected.

The meeting was adjourned.